

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WASHINGTON

THOMAS WILLIAM SINCLAIR RICHEY,

Plaintiff,

v.

BERNARD WARNER, STEVEN SINCLAR,
OPM OLIVER-ESTES,

Defendants.

No. 4:14-cv-05011-EFS

**ORDER DENYING LEAVE TO PROCEED IN
FORMA PAUPERIS AND DISMISSING
ACTION**

By Order filed February 12, 2014, ECF No. 7, the Court directed Mr. Richey to show cause why he should not be precluded from proceeding *in forma pauperis* under 28 U.S.C. § 1915(g) ("section 1915(g)"), the "three strikes" provision of the Prison Litigation Reform Act, Pub. L. No. 104-134, 110 Stat. 1321 (1995). Plaintiff did not respond and has filed nothing further in this action.

Court records from the Western District of Washington¹ show that Mr. Richey has filed two civil actions that were dismissed for failure

¹ *U.S. ex rel. Robinson Rancheria Citizens Council v. Borneo, Inc.*, 971 F.2d 244, 248 (9th Cir. 1992) (taking notice of judicial proceedings in another court); *see also Barron v. Reich*, 13 F.3d

1 to state a claim and one appeal that was found frivolous. In *Richey*
2 *v. Thaut*, 3:11-cv-05680-RBL, the District Court ordered on March 26,
3 2012, "Plaintiff's claims are Dismissed without Prejudice for failure
4 to exhaust and that the dismissal count as a strike pursuant to 28
5 U.S.C. § 1915(g)," ECF No. 24. The Ninth Circuit (cause number 12-
6 35254) affirmed and issued its Mandate on March 14, 2013. In a second
7 case titled, *Richey v. Thaut*, 3:11-cv-05755-BHS, the District Court
8 granted Defendant's Motion to Dismiss First Amendment claims for
9 failure to state a claim upon which relief may be granted on May 16,
10 2012, ECF No. 27. The Ninth Circuit (cause number 12-35632) found
11 "the appeal is frivolous," and issued its Mandate on November 15,
12 2012.

13 The allegations of his Complaint, including a custody demotion
14 for failure to provide a urine sample which resulted in the loss of
15 privileges, do not show an "imminent danger of serious physical
16 injury" which would excuse the preclusive effects of 28 U.S.C. §
17 1915(g). Therefore, **IT IS ORDERED** Plaintiff's application to proceed
18 *in forma pauperis* is **DENIED**.

19 Furthermore, having failed to pay the applicable fee of \$400.00
20 (\$350.00 filing fee plus \$50.00 administrative fee) within the time
21 allotted by the Court, **IT IS ORDERED** this action is **DISMISSED** without
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24 1370, 1377 (9th Cir. 1994) (matters subject to judicial notice may
25 be considered under Fed. R. Civ. P. 12(b)(6)).
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1 prejudice for failure to comply with 28 U.S.C. § 1914. **IT IS FURTHER**
2 **ORDERED** all pending motions are **DENIED as moot**.

3 **IT IS SO ORDERED.** The District Court Executive is directed to
4 enter this Order, enter judgment, forward a copy to Plaintiff, and
5 close the file. The Court certifies any appeal of this dismissal
6 would not be taken in good faith.

7 **DATED** this 24th day of March 2014.

8
9 s/ Edward F. Shea
EDWARD F. SHEA
10 Senior United States District Judge
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